85-608 (1)

No.

IN THE
SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1984

STATE OF ILLINOIS,

Petitioner,

vs.

ALBERT KRULL, GEORGE
LUCAS and SALVATORE MUCERINO,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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51 pp

QUESTION PRESENTED

Whether a search conducted pursuant to a statutory scheme later held unconstitutional is nevertheless valid where the search was undertaken in good faith reliance on that statute prior to the time that any court had declared the statute unconstitutional.

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Petitioner, the State of Illinois, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Illinois, which was entered on July 17, 1985.

OPINION BELOW

The published opinion of the Supreme Court of Illinois is reproduced in Appendix A to this Petition.

CONSTITUTIONAL PROVISION AT ISSUE

UNITED STATES CONSTITUTION - FOURTH AMENDMENT

The right of the People to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

JURISDICTION

The opinion, order and judgment of the Supreme Court of Illinois was entered on July 17, 1985. This Petition for a Writ of Certiorari is filed within 60 days of that date. United States Supreme Court Rule 20(1). The jurisdiction of this Court in invoked under 28 U.S.C. §1257(3).

STATEMENT OF THE CASE

Defendant Salvatore Mucerino was charged with one count of possession of a stolen vehicle (R. CM2); defendant George Lucas was charged with three counts of possession of a stolen motor vehicle and one count of possession of a false manufacturer's identification number (R. CL2-CL5); defendant Albert Krull was charged with 6 counts of failure to surrender title (R. CK2-CK6). The facts forming the basis of the instant charges arose on July 5, 1981, when a Detective from the Chicago Police Department made a warrantless entry

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[1]The common law record as to defendant Mucerino is designated as "R. CM;" the common law record as to defendant Lucas is designated as "R. CL." The common law record with respect to defendant Krull is designated as "R. CK." The findings of the trial court upon remand from the Appellate Court are designated as "Supp.R."

onto the business premises of the Action Iron and Metal Company for the purpose of performing a records inspection pursuant to section 5-401(e) of the Illinois Vehicle Code (Ill. Rev. Stat. 1979, ch. 95½, sec. 5-401(e)). On July 6, 1981, one day after the above search and seizure, Federal District Court Judge Milton Shadur, in the unrelated case of Bionic Auto Parts and Sales, Inc. et. al. v. Tyrone C. Fahner, 518 F.Supp. 582 (N.D. Ill. 1981), declared section 5-401(e) unconstitutional because the authority to search had been too broadly granted. Defendants in the instant case subsequently filed a motion to suppress evidence in state court, claiming, inter alia, that the search and seizure carried out by the police on July 5 was invalid due to District Judge Shadur's determination in Federal Court on July 6

that section 5-401(e) was unconstitutional. After a hearing, the trial court granted defendants' motion to suppress, basing its holding solely on District Judge Shadur's finding that section 5-401(e) was unconstitutional. (R. 31)

Detective McNally, on July 5, 1981, at approximately 10:30 a.m., made a warrantless entry onto the premises (i.e. wreck yard) of the Action Iron and Metal Company. (R. 7-8, 24-25) He entered the wreck yard pursuant to his regular inspection duties of checking wreck yards and under authority of Ill. Rev. Stat. 1979, ch. 95½, secs. 5-401 et. seq. (R. 12)

After entering the premises, Detective McNally approached defendant Lucas, identified himself as a police officer, and asked if the yard was open for business. (R. 25) Defendant Lucas replied that he was open for business and that he was the one in charge of buying cars. (R. 21, 25) Detective McNally asked defendant Lucas if he could see the yard's license and the other records of vehicles which had been purchased. (R. 26) Lucas could not produce the license at that time, but did produce a pad of paper which showed the vehicles he had purchased. (R. 26) Detective McNally then asked Lucas if he could look at the cars in the yard and Lucas stated "go right ahead." (R. 26) Detective McNally proceeded to examine the vehicles in the yard and the evidence of stolen motor vehicles he uncovered led to the arrests of the

three defendants. (R. 12, 16-17, 26)

After the State trial court held the statute unconstitutional the People appealed. On November 23, 1983, the Appellate Court of Illinois, First Judicial District, vacated the judgment of the trial court and remanded the cause with the suggestion that the trial court reconsider the constitutionality of section 5-401(e). In so doing the Appellate Court specifically directed that the trial court reconsider this case in light of the evolving considerations of good faith in cases before this Court at that time. During the pendency of the appeal to the Appellate Court, the Illinois legislature revised the content of section 5-401(e) by adding new sections 5-1001-1 and 5-403 (Ill. Rev. Stat. 1983, ch. 95½, secs. 5-1001-1 and 5-403, eff. Jan. 1, 1983). With such revisions in place, the injunctions issued

by District Judge Shadur in Bionic became moot and those parts of Judge Shadur's injunction were therefore vacated by the Court of Appeals in Bionic Auto Parts v. Fahner, 721 F.2d 1072 (7th Cir. 1983).

On July 9, 1984, on remand in the instant case, the state trial judge reiterated his declaration that section 5-401 (e) was unconstitutional as it existed in July 1981. The trial court held that the issue of good faith had no applicability to reliance on an unconstitutional statute and reaffirmed his earlier decision suppressing the evidence. (Supp.R. 9) The People appealed this decision directly to the Illinois Supreme Court. On July 17, 1985 the Illinois Supreme Court affirmed the action of Judge Hogan finding that the statute was indeed unconstitutional and that the Constitution does not afford an

exception to the exclusionary rule based on good faith reliance on a presently valid yet later invalidated statute. It is from this latter finding that the People of the State of Illinois pray for relief.

REASONS FOR GRANTING THE WRIT

I.

SEARCHES UNDERTAKEN IN REASONABLE GOOD FAITH RELIANCE ON A STATUTE SUBSEQUENTLY HELD INVALID ARE CONSTITUTIONAL.

In the recent case of United States v. Leon, 468 U.S. ___, 822 L.Ed.2d 677, 104 S.Ct. 3405 (1984), this Court made it perfectly clear that the critical component in an analysis of the exclusionary rule is deterrence. With deterrence as the goal it is irrational and counterproductive to exclude evidence obtained in reasonable good faith reliance on a presumptively constitutional statute.

Here, the police were performing a search pursuant to a statute which had

never been held unconstitutional by any court. This statute, Ill. Rev. Stat. 1979, ch. 95½, sec. 5-401(e), part of an overall scheme to prevent and detect auto theft, provided that

> "Every record required to be maintained under this Section shall be opened to inspection by the Secretary of State or his authorized representative or any peace officer for inspection at any reasonable time during the night or day. Such inspection may include examination of the premises of the licensee's established place of business for the purpose of determining the accuracy of required records."

Acting under the authority of this statute the officers entered the premises of the body shop, reviewed the scant records kept there and then conducted a search of the premises to verify the records. During the search several stolen vehicles were discovered and arrests were therefore made.

On the following day, in an unrelated action, Federal District Court Judge Milton Shadur declared the statute under which the officers had acted here to be unconstitutional in the case of Bionic Auto Parts and Sales, Inc. et al. v. Tyrone C. Fahner, 518 F.Supp. 582 (N.D. Ill. 1981). Prior to this time no court had ever invalidated this statute.

A squarely analogous situation was before this Court in United States v. Peltier, 422 U.S. 531, 95 S.Ct. 2313 (1975) where this Court allowed the admission of evidence seized in a good-faith border search without a warrant under a statutory construction that was subsequently held unconstitutional. Four months after Peltier's arrest, in an unrelated case this Court had overturned the definition of what constitutes a reasonable distance from the

border for purposes of a border search. Almeida-Sanchez v. United States, 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d 506 (1973). In Peltier the Court refused to exclude the challenged evidence and refused to apply the Almeida-Sanchez decision retroactively. The Court stated: "evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment." 422 U.S. at 542, 95 S.Ct. at 2320. In so holding the Court explicitly relied on the rationale expressed in Michigan v. Tucker, 417 U.S. 433, 447, 94 S.Ct. 2357, 2365, 41 L.Ed.2d 182 (1974) that in which this Court noted the deterence rationale for the exclusionary rule. Importantly, however, in Tucker this Court stated:

> "Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force."

In Michigan v. DeFillippo, 443 U.S. 31, 99 S.Ct. 2627, 61 L.Ed.2d 343 (1979), this Court again noted the deterrent policy underlying the exclusionary rule and also explained the strong policy with respect to the enforcement of presumptively vald laws as follows:

> To deter police from enforcing a presumptively valid statute was never remotely in the contemplation of even the most zealous advocate of the Exclusionary Rule. 443 U.S. at 38 n.3, 99 S.Ct. at 2633 n.3.
>
> * * *
>
> Police are charged to enforce laws until and unless they are declared unconstitutional. The enactment of a law forecloses speculation by enforcement offices concerning its constitutionality with the possible exception of a law so grossly and flagrantly unconstitutional

> that any person of reasonable prudence would be bound to see its flaws. Society would be ill served if its police officers took it upon themselves to determine which laws are and which are not constitutionally entitled to enforcement. 443 U.S. at 37.

In United States v. Leon, 468 U.S. ___, 82 L.Ed.2d 677, 104 S.Ct. 3405 (1984) this Court held that the Fourth Amendment exclusionary role does not bar use of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but which is ultimately found to be unsupported by probable cause. Citing Peltier and other cases in the same line, the court in Leon focused extensively on the deterrence rationale of the exclusionary rule and concluded that "the marginal or nonexistent benefits produced by suppressing

evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion." 82 L.Ed.2d at 698. In so holding the Court focused on the fact that excluding evidence obtained in reasonable, good faith reliance on a statute would only make police less willing to carry out their law enforcement duties. When an officer acts with objective good faith under a warrant issued by a judge or magistrate there is no unlawful police conduct and nothing to deter. "Penalizing the officer for the magistrate's error cannot logically contribute to the deterrence of Fourth Amendment violations." 82 L.Ed. 2d at 697.

Likewise, in the instant case, exclusion of evidence obtained in good faith reliance on a statute could not serve any

rational deterrent purpose. Police officers can not be expected to predict that a facially constitutional statute will later be struck down. Therefore this Court should accept jurisdiction in order to resolve the important question of whether searches undertaken in reasonable good faith reliance on a statute subsequently held invalid are constitutional.

CONCLUSION

For the foregoing reasons, the State of Illinois respectfully requests that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois.

Respectfully submitted,

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July 17, 1985

The mandate(s) of this Court will issue to the Appellate Court, Circuit Court or other Agency on August 14, 1985, unless a petition for rehearing (due August 7, 1985) or motion to stay the mandate is timely filed. Supreme Court Rule 368.

Docket No. 60629-Agenda 11-March 1985.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellant, v.

ALBERT KRULL et al., Appellees.

JUSTICE MORAN deliverd the opinion of the court:

Defendants were charged with various violations of the Illinois Vehicle Code (Ill. Rev. Stat. 1981, ch. 95½, par. 1-100 et seq.) (the Code). The charges stem from a July 1981 search of the Action Iron and Metal Company (Action Iron) which revealed the presence of several motor vehicles that allegedly had been stolen. Albert Krull, the licensee of Action Iron, was charged with six counts of failure to surrender title in violation of section 3-116(c) of the Code (Ill. Rev. Stat. 1981, ch. 95½, par. 3-116(c)). George Lucas, an employee,

was charged with three counts of possession of a stolen motor vehicle and with possession of a false manufacturer's identification number in violation of sections 4-103 (a)(1) and 4-103(a)(1), 4-103(a)(4)). Salvatore Mucerino was charged with possession of a stolen motor vehicle, in violation of section 4-103(a)(1).

Defendants moved to suppress the evidence seized by Chicago police officers during the search of the Action Iron premises. The circuit court of Cook County, after an evidentiary hearing, determined that the search had been conducted without a warrant and without probable cause. In addition the court found that Lucas' purported consent to the search was invalid. The State asserted, however, that the police had authority under section 5-401 of the Code (Ill. Rev. Stat. 1981, ch. 95½,

par. 5-401(e)) to conduct the search. Section 5-401(e) authorizes warrantless administrative searches of the business premises of automotive parts dealers, scrap processors and parts recyclers. The circuit court concluded that section 5-401(e) was unconstitutional, and, finding no other basis upon which to sustain the search, granted defendants' motion. The apellate court, by order, vacated the circuit court's ruling and remanded the cause for further consideration. On remand, the circuit court again found the section at issue to be invalid and, therefore, granted the motion to suppress. The State now appeals directly to this court pursuant to our Rule 603 (87 Ill. 2d R. 603).

The primary issue concerns the constitutionality of the statutory inspection scheme authorized by section 5-401(e) in

1981 when the search took place. The Illinois Vehicle Code has subsequently been amended, and the inspection scheme, as amended, has been upheld by one court as constitutional. (Bionic Auto Parts & Sales, Inc. v. Fahner (7th Cir. 1983), 721 F.2d 1072.) The search here, however, occurred before the relevant amendments. The State contends that the warrantless inspection scheme authorized in 1981 by section 5-401(e) was constitutional. It argues, therefore, that the July 1981 search of Action Iron pursuant to section 5-401(e) was valid. Alternatively, the State asserts that the search was made in "good faith" reliance on the statute, which at the time had not been declared unconstitutional. As such, it argues that the search was valid regardless of whether the statute is subsequently determined to be unconsti-

tutional. In addition, it contends that the evidence seized on July 5, 1981, was the result of a valid consent search.

The record discloses that on July 5, 1981, at approximately 10:30 a.m., Leilan McNally, a Chicago police officer, observed tow trucks bring several vehicles inside the premises at Action Iron. McNally, who was assigned to inspect wrecking yards, entered the premises without a search warrant. Once inside, he met defendant Lucas. McNally identified himself, and asked Lucas if the yard was open for business. Lucas responded that it was, and stated that he was in charge of the premises. The other defendants were not present when McNally entered the yard. Defendant Mucerino arrived at Action Iron at about 11:30 a.m. Defendant Krull was not present while McNally was on the premises. McNally was

later joined by two other police officers. They did not have a search warrant. None of the officers had procured arrest warrants.

According to McNally, he asked Lucas for the dealer's license and for the records of vehicle purchases. Lucas replied that he did not know where the license was located. Lucas did, however, produce a sheet of paper, which he stated was a list of all of the vehicles he had purchased. Five purchases were listed on the sheet of paper. McNally then asked Lucas if he could look at the cars in the yard. McNally testified that Lucas said, "Go right ahead."

Thereafter, McNally inspected the vehicles in the yard and made notations of the vehicles by serial number. He checked the serial numbers on a mobile computer in

his squad car. Based on the computer check, he determined that the remnants of three vehicles in the Action Iron yard had been stolen. McNally testified at the suppression hearing that he also found another vehicle with its vehicle identification number removed. He seized all four vehicles. McNally also placed Lucas under arrest. The other defendants were arrested at a later date.

Section 5-301 of the Code (Ill. Rev. Stat. 1981, ch. 95½, par. 5-301) requires dealers in used auto parts to be licensed. Under section 5-401(a) and administrative regulation, licensees must keep various records relating to the acquisition and disposition of vehicles and parts. Section 5-401(e) (Ill. Rev. Stat. 1981, ch. 95½, par. 5-401 (e)), the section being challenged here, provided for the warrantless

inspection of the records required to be kept by licensees and for the inspection of licensees' business premises. It stated:

> "Every record required to be maintained under this Section shall be opened to inspection by the Secretary of State or his authorized representative or any peace officer for inspection at any reasonable time during the night or day. Such inspection may include examination of the premises of the licensee's established place of business for the purpose of determining the accuracy of required records."

This is not the first case to address the constitutionality of the Code's administrative inspection scheme. On July 6, 1981, the day after the search under consideration here occurred, the federal district court, in Bionic Auto Parts & Sales, Inc. v. Fahner (N.D. Ill. 1981), 518 F.Supp. 582, a civil rights action brought

pursuant to 42 U.S.C., section 1983, held that section 5-401(e) was unconstitutional. The district court determined that section 5-401(e) vested excessive discretion in enforcement officers and did not define regular enforcement procedures. As such, the court held that the section failed to meet the standards for administrative searches established in Donovan v. Dewey (1981), 452 U.S. 594, 69 L.Ed.2d 262, 101 S.Ct. 2534, and was invalid under the fourth and fourteenth amendments to the United States Constitution.

Subsequently, the Code was amended by the Illinois General Assembly. These amendments, particularly section 5-403 (Ill. Rev. Stat. 1983, ch. 95½, par. 5-403), placed additional limits on the frequency and duration of the searches authorized by section 5-401(e). On appeal from

the district court decision in Bionic Auto Parts, the Federal appellate court declined to address the constitutionality of the inspection scheme as it existed in 1981. Rather, it considered the present statutory provisions. The court held that the addition of sections 5-403 and 5-100-1 (Ill. Rev. Stat. 1983, ch. 95½, par. 5-100-1) "cured any unconstitutional taint which the Vehicle Code otherwise might have had." (Bionic Auto Parts & Sales, Inc. v. Fahner (7th Cir. 1983), 721 F.2d 1072, 1075.) Because the search here occurred prior to the effective date of sections 5-403 and 5-100-1, our inquiry is necessarily limited to consideration of the constitutionality of the search in terms of the statute as it then existed.

The fourth amendment to the United States Constitution (U.S. Const., amend.

IV) and article I, section 6, of our State Constitution's bill of rights (Ill. Const. 1970, art. I, sec. 6) protect individuals against unreasonable searches and seizures. (People v. Hoskins (1984), 101 Ill. 2d 209, 214.) Administrative inspections are considered searches within the meaning of the fourth amendment. (Donovan v. Dewey (1981), 452 U.S. 594, 69 L.Ed.2d 262, 101 S.Ct. 2534; Camara v. Municipal Court (1967), 387 U.S. 523, 18 L.Ed.2d 930, 87 S.Ct. 1727.) Therefore, the rule that warrantless searches are generally unreasonable, and hence unconstitutional, applies to administrative searches, including the inspection of commercial business by government officials. (See Marshall v. Barlow's, Inc. (1978), 436 U.S. 307, 312, 56 L.Ed.2d 305, 311, 98 S.Ct. 1816, 1820; See v. City of Seattle (1967), 387 U.S.

541, 546, 18 L.Ed.2d 943, 948, 87 S.Ct. 1737, 1741.) However, some legislative schemes authorizing warrantless administrative searches have survived fourth amendment scrutiny. (See, e.g., United States v. Biswell (1972), 406 U.S. 311, 32 L.Ed.2d 87, 92 S.Ct. 1593 (firearms industry); Colonnade Catering Corp. v. United States (1970), 397 U.S. 72, 25 L.Ed.2d 60, 90 S.Ct. 774 (liquor industry).) The Supreme Court has recognized that the assurance of regularity afforded by a warrant may be unnecessary where there has been a long and extensive regulatory presence in a certain industry. The court in Donovan v. Dewey (1981), 452 U.S. 594, 598-99, 69 L.Ed.2d 262, 268-69, 101 S.Ct. 2534, 2538, explained:

> [U]nlike searches of private homes, which generally must be conducted pursuant to a war-

rant in order to be reasonable under the Fouth Amendment legislative schemes authorizing warrantless administrative searches of commercial property do not necessarily violate the Fourth Amendment. [Citations.] The greater latitude to conduct warrantless inspections of commercial property reflects the fact that the expectation of privacy that the owner of commercial property enjoys in such property differs significantly from the sanctity accorded an individual's home, and that this privacy interest may, in certain circumstances, be adequately protected by regulatory schemes authorizing warrantless inspections."

The court in Donovan v. Dewey upheld a Federal statute which provided for the warrantless inspection of mines. In so doing, the court established criteria to determine whether a particular statutory

scheme meets the test of reasonableness required by the fourth amendment. Ini tially. the court noted that Congress had a substantial interest in promoting mine safety and that a "system of warrantless inspections was necessary 'if the law is to be properly enforced and inspection made effective.' " (452 U.S. 594, 602-03, 69 L.Ed.2d 262, 271, 101 S.Ct. 2534, 2540.) Moreover, the statute "in terms of certainty and regularity of its application, provide[d] a constitutionally adequate substitute for a warrant." (452 U.S. 594, 603, 69 L.Ed.2d 262, 272, 101 S.Ct. 2534, 2541.) The court observed that the statute required inspection of all mines, defined the frequency of inspection, prohibited forcible entries, and required government officials to pursue civil remedies when refused entry to a mine. In addition,

compliance standards were set forth in the statute and administrative regulations. The court concluded that since the "discretion of Government officials to determine what facilities to search and what violations to search for is thus directly curtailed by the regulatory scheme," the statute did not violate the fourth amendment. 452 U.S. 594, 605, 69 L.Ed.2d 262, 273, 101 S.Ct. 2534, 2541.

There is certainly a strong public interest in preventing the theft of automobiles and the trafficking in stolen automotive parts. Any statutory scheme, like section 5-401(e), which helps facilitate the discovery and prevention of automobile thefts, furthers that strong public policy. (See Northern Illinois Automible Wreckers & Rebuilders Association v. Dixon (1979), 75 Ill. 2d 53, 61.) In

addition, we believe it reasonable to assume that warrantless administrative searches are necessary in order to adequately control the theft of automobiles and automotive parts. However, we disagree with the State that saection 5-401(e), unencumbered by the recent amendments which we have alluded to earlier, provides a constitutionally adequate substitute for a warrant. Like the district court in Bionic Auto Parts & Sales, Inc. v. Fahner (N.D. Ill. 1981), 518 F.Supp. 582, we believe that the section vested State officials with too much discretion to decide who, when, and how long to search. The statute stated that searches could be conducted at "any reasonable time during the night or day." (Ill. Rev. Stat. 1981, ch. 95½, par. 5-401(e).) This language is very similar to the provision found to be

unconstitutional in Marshall v. Barlow's, Inc. (1978), 436 U.S. 307, 309, 56 L.Ed.2d 305, 309, 98 S.Ct. 1816, 1819. Since the statute did not provide for the regularity and neutrality required by the fourth amendment, we must conclude that the warrantless search conducted pursuant to the statute in force at the time (July 5, 1981) was unconstitutional, unless there is another basis upon which to uphold the search.

The State argues that the search here was valid even though the statute authorizing the search was unconstitutional. It asserts that the search and seizure made in "good faith" reliance on section 5-401(e), which at the time had not bee declared to be unconstitutional, were valid regardless of the fact that the statute was subsequently found to be unconstitutional. The

State, in essence, attempts to compare the present case to Michigan v. DeFillippo (1979), 443 U.S. 31, 61 L.Ed.2d 343, 99 S.Ct. 2627, where the Supreme Court upheld an arrest and search made pursuant to an ordinance which was subsequently found to be invalid.

In DeFillippo, a Detroit ordinance made it unlawful for any peson stopped by police to refuse to identify himself and produce evidence of his identity. The defendant was stopped pursuant to the statute. When he gave police a false identity, he was arrested and searched. Drugs were discovered in one of defendant's pockets and he was charged with possession of a controlled substance. The Michigan Court of Appeals declared the ordinance unconstitutional and ordered that the evidence seized during defendant's arrest be

suppressed. The Supreme Court reversed, holding that the arrest based on probable cause and in good faith reliance on the ordinance was valid, despite the subsequent determination that the ordinance was unconstitutional. The court concluded that any search that was conducted incident to the arrest also was valid. 433 U.S. 31, 35-38, 61 L.Ed.2d 343, 348-50, 99 S.Ct. 2627, 2630-32.

In holding the search constitutional, however, the Supreme Court in DeFillippo distinguished between substantive laws, which define criminal offenses, and procedural laws, which directly authorize searches. An arrest and search conducted pursuant to a substantive law, like the Detroit ordinance, will be upheld, provided the officer has probable cause to make the arest and he relied on the statute in good

faith. In contrast, an arrest and search made pursuant to a procedural statute, not yet declared unconstitutional, and which authorizes unlawful searches, will not be upheld, even though the arrest and search were made in good-faith reliance on the statute. (443 U.S. 31, 39, 61 L.Ed.2d 343, 351, 99 S.Ct. 2627, 2633; see, e.g., Torres v. Puerto Rico (1979), 442 U.S. 465, 61 L.Ed.2d 1, 99 S.Ct. 2425 (search of airport luggage pursuant to statute that authorized such searches without a warrant and without probable cause violates fourth amendment); see generally Comment, Constitutional Law: Search and Seizure - The Role of Police Officer Good Faith in Substantive Fourth Amendment Doctrine (1980), 55 Wash. L. Rev. 849, 865-66.) The court continues to utilize the substantive-procedural dichotomy in determining whether a search conducted pur-

suant to a statute was valid. United States v. Leon (1984), 468 U.S. ___, ___, 82 L.Ed.2d 677, 691, 104 S.Ct. 3405, 3415-16; see, e.g., Ybarra v. Illinois (1979), 444 U.S. 85, 62 L.Ed.2d 238, 100 S.Ct. 338.

Section 5-401(e), unlike the Detroit ordinance in DeFillippo, did not define a substantive criminal offense. Rather, it directly authorized warrantless searches. Thus, section 5-401(e) is included in the category of statutes which the Supreme Court has defined as procedural. Any good-faith reliance on such a statute will not cure an otherwise illegal search. See, e.g., Almeida-Sanchez v. United States (1973), 413 U.S. 266, 37 L.Ed.2d 596, 93 S.Ct. 2535; Sibron v. New York (1968), 392 U.S. 40, 20 L.Ed.2d 917, 88 S.Ct. 1889; Berger v. New York (1967), 388 U.S. 41, 18 L.Ed.2d 1040, 87 S.Ct. 1873.

The State also contends that defendant Lucas validly consented to the search of the Action Iron premises. A search conducted with a defendant's valid consent does not violate the fourth amendment. The validity of a consent search depends on whether the consent was voluntarily given. (People v. Bean (1981), 84 Ill. 2d 64, 69.) The rule for determining the voluntariness of a consent to search is that it must be shown that consent was not the result of duress or coercion, express or implied, but was in fact freely given. (Schneckloth v. Bustamonte (1973), 412 U.S. 218, 248, 36 L.Ed.2d 854, 875, 93 S.Ct. 2041, 2059.) Whether consent has been voluntarily given is a question of fact to be determined by the trial court, and that determination will be accepted by the reviewing court unless it is cleary unreasonable. People

v. DeMorrow (1974), 59 Ill. 2d 352, 358.

The search here commenced when Officer McNally entered the Action Iron premises and ordered Lucas to produce the license and records required to be kept under section 5-401(a). He testified that he entered the premises slely on the basis of section 5-401(e), which we have today held to be invalid. He did not have a warrant or probable cause. None of the defendants consented to his entering the premises. Nor does the State contend that Lucas voluntarily consented to inspection of the records. Based on the fact that Lucas purportedly consented midway through the search, and other factors, the trial court concluded that Lucas' consent was involuntary. It determined that Lucas had merely acquiesced to what he thought the officer had a right to do under section

5-401(e). Our review of the record convinces us that the trial court's determination was not unreasonable. The trial court made its decision after considering all the facts surrounding the search. Such a factual determination is entitled to deference by the reviewing court. See People v. DeMorrow (1974), 59 Ill. 2d 352, 358.

For the reasons given, the circuit court's order granting defendants' motion to suppress is affirmed.

Judgment affirmed.

SUPREME COURT OF ILLINOIS

OPINION LIST

Springfield, Illinois, July 17, 1985

Opinions have this day been filed in the following cases:

No. 57935 - Alfred M. Sanelli, appellant, v. Glenview State Bank, appellee. Appeal, Circuit Court (Cook).
Order affirmed.
Simon, J., Clark, C.J., & Ward, J., dissenting.

No. 58586 - People State of Illinois, appellee, v. Domingo Perez, appellant. Appeal, Circuit Court (Will).
Judgment affirmed.
Simon, J., dissenting.

No. 58993 - E&E Hauling, Inc.; et al., etc., et al., appellees, v. Pollution Control Board, appellee (The Village of Hanover Park, etc., appellant). Appeal, Appellate Court, Second District.
Judgment affirmed.
Simon, J., dissenting.

No. 59444 - Kathy Simpson, as Admr., etc., et al., appellees, v. General Motors Corporation, etc., appellant. Appeal, Appellate Court, First District.
Judgment affirmed.
Ryan & Miller, JJ., dissenting.

No. 59766 - Larry Clarkson, appellant, v. William Wright, appellee. Appeal, Appellate Court, Third District.
Judgments reversed; cause remanded.
Ryan, Moran & Miller, JJ., dissenting.

No. 59787 - People State of Illinois, appellant, v. John Gorney, Jr., appellee. Appeal, Appellate Court, Third District.
Judgment reversed; cause remanded with directions.

No. 59912 - People State of Illinois, appellant, v. Charles O. Wick, appellee. Appeal, Appellate Court, Second District.
Judgment affirmed.

No. 60114 - Peter J. Vogel, et al., appellees, v. Jim G. Dawdy, et al. (Norman Suttles, et al., appellants). Appeal, Appellate Court, Fourth District.
Judgments affirmed; cause remanded.
Miller, J., took no part.

No. 60123 - John W. Unger, M.D., appellant, v. Continental Assurance Company, et al., appellees. Appeal, Appellate Court, First District.
Judgment affirmed.
Simon, J., dissenting.

Nos. 60182, 60644 Cons. - Donald John Prewein, et al., appellees, v. Caterpillar Tractor Company, et al., appellants. Appeal, Appellate Court, Third and Second Districts.
No. 60182 - Judgment affirmed.
No. 60644 - Judgment reversed; cause remanded.

No. 60184 - People State of Illinois, appellant, v. Terry B. Allen, appellee. Appeal, Appellate Court, Third District.
Judgment of Appellate Court reversed; Judgment of Circuit Court affirmed; cause remanded.

Nos. 60373, 60374, 60375, 60376 Cons. - James H. Felt, et al., appellees, v. Board of Trustees of the Judges Retirement System, etc., appellant. Appeal, Circuit Court (Sangamon).
No. 60373 - Judgment affirmed.
No. 60374 - Judgment affirmed.
No. 60375 - Judgment affirmed.
No. 60376 - Judgment affirmed in part.
Ryan, J., took no part.

The motion by appellees to strike certain portions of appellant's brief is denied.

No. 60515 - Walter Braun, appellant, v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago, etc., et al., appellees. Appeal, Appellate Court, First District.
Judgment affirmed.

No. 60629 - People State of Illinois, appellant, v. Albert Krull, et al., appellees. Appeal, Circuit Court (Cook).
Judgment affirmed.